

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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|---|---|------------------------------------|
| DANIEL WESLEY-EL, |) | |
| |) | Civil Action No. 09 - 285J |
| Plaintiff, |) | |
| |) | District Judge Kim R. Gibson |
| v. |) | Magistrate Judge Lisa Pupo Lenihan |
| |) | |
| JEFFREY A. BEARD, <i>Secretary of Corrections;</i> |) | |
| DORINA VARNER, <i>Chief Grievance Coordinator;</i> |) | |
| NICHOLAS SCHARFF, <i>Medical Director, Bureau</i> |) | |
| <i>of Health Care Services;</i> ALLEN B. FOGEL, |) | |
| <i>Director, Bureau of Health Care Services;</i> |) | |
| EUGENE GINCHEREON, <i>Assistant Medical</i> |) | |
| <i>Director, Bureau of Health Care Services;</i> |) | |
| GERALD L. ROZUM, <i>Superintendent, State</i> |) | |
| <i>Correctional Institution at Somerset;</i> HEIDI |) | |
| SROKA, <i>Supts. Asst. Facility Grievance</i> |) | |
| <i>Coordinator;</i> JOHN VISINSKY, <i>Correctional</i> |) | |
| <i>Health Care Administrator, Medical Staff;</i> DENNIS |) | |
| THOMAS, <i>R.N., Acting Correctional Health Care</i> |) | |
| <i>Administrator;</i> SYLVIA GIBSON, <i>Deputy,</i> |) | |
| <i>Program Review Committee;</i> STEVEN GLUNT, |) | |
| <i>Deputy, Program Review Committee;</i> ALLEN |) | |
| JOSEPH, <i>CCPM, Program Review Committee,</i> |) | |
| <i>Acting Facility Grievance Coordinator</i> |) | |
| |) | |
| Defendants. |) | |
| |) | |

MEMORANDUM ORDER

The above captioned case was initiated by the filing of a Motion to Proceed *In Forma Pauperis* (ECF No. 1) on November 9, 2010, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

On January 24, 2011, the magistrate judge filed a Report and Recommendation (ECF No. 61) recommending that Defendants' Motion to Dismiss (ECF No. 24) be granted as to Defendants Beard,

Varner, Rozum, Sroka, Gibson, Glunt, and Joseph, and denied as to Defendants Scharff, Fogel, Ginchereau, Visinsky, and Thomas. The report further recommended that Plaintiff's Motions for Partial Summary Judgment both be denied as premature and as failing to comply with this Court's Local Rules. Plaintiff filed Objections to the Report and Recommendation on February 4, 2011 (ECF No. 62) and on February 11, 2011 (ECF No. 63). Plaintiff's Objections do not undermine the recommendation of the magistrate judge.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and the Objections thereto, the following order is entered:

AND NOW, this 22nd day of February, 2011;

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (ECF No. 24) is **GRANTED** in part and **DENIED** in part: specifically, the Motion is **GRANTED** as to Defendants Beard, Varner, Rozum, Sroka, Gibson, Glunt, and Joseph, and **DENIED** as to Defendants Scharff, Fogel, Ginchereau, Visinsky, and Thomas.


IT IS FURTHER ORDERED that Plaintiff's Motions for Partial Summary Judgment (ECF Nos. 43 and 46) both are **DENIED** as premature and as failing to comply with this Court's Local Rules.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF. No. 61) dated January 24, 2011, is **ADOPTED** as the Opinion of the Court.

AND IT IS FURTHER ORDERED that this case is remanded back to the magistrate judge for further pretrial proceedings.

By the Court:

Daniel Wesley
GB-0430
SCI Somerset
1600 Walters Mill Road
Somerset, PA 15510


Kim R. Gibson Judge